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XV.

MEMOIR

OF THE

Hon. JAMES De LANCEY,

LIEUTENANT GOVERNOR

OF THE

PROVINCE OF NEW YORK.

BY

Edward F. De Lancey.

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MEMOIR

OF THE

HONOURABLE JAMES DE LANCEY

LIEUTENANT-GOVERNOR OF THE PROVINCE OF NEW YORK

This distinguished man was the oldest son of *Etienne* or *Stephen* De Lancey a French Huguenot gentleman of the City of Caen in Normandy, who, driven from France by the persecution of 1681, fled with numbers of his countrymen to the new world. He belonged to an ancient family in Picardy, and on being obliged to fly from France, on account of the religious persecution which disgraced those days, he went first to Rotterdam in Holland, and after remaining in that hospitable land for two or three years crossed over to England. There on the 11th of March 1686, he took out letters patent of denization under the great seal, and shortly afterwards sailed for New York, where he arrived on the seventh of the following June [1].

On the 23d of January 1700 he married Anne second daughter of the Hon. Stephanus Van Cortlandt, an opulent and highly respectable citizen of New York, of which marriage was issue James De Lancey, the subject of this sketch, who was born in New York city in 1702, and was the eldest of seven children ; five sons and two daughters. His eldest sister, Susannah, became the wife of Capt. afterwards Vice Admiral Sir Peter Warren KB. Anne, the youngest, married the Hon. John Watts of New York Of his brothers, two, Stephen and John, died unmarried in early manhood ; the other two, Peter and Oliver, became men of note

1 N. Y. Ass. Jour. I, 515.

in the colony. The former resided at the borough of West Chester which he represented for years in the Assembly; Oliver, the youngest of the brothers, was most of his life Commander of the forces of the colony, was also a member of the Assembly and of the Council, Receiver-General of New York, and the senior Loyalist Brigadier-General in commission in the war of the Revolution.

After having attended the best schools the Colony then afforded, James De Lancey was sent to England to prosecute his studies, and entered as a Fellow-Commoner of Corpus Christi college in the University of Cambridge, on the second of October, 1721.[1] The Master of Corpus at that time was Dr. Samuel Bradford, afterwards bishop of Carlisle, and next of Rochester. And the gentleman whom young De Lancey chose as his Tutor, was the learned Dr. Thomas Herring, who became successively Bishop of Bangor, Archbishop of York, and Archbishop of Canterbury.

This choice proved afterwards of great advantage to James De Lancey, for the master and pupil kept up their intimacy by letter long after the one became primate of all England the other was in office in his native land; and in the various political controversies in which the latter became afterwards engaged, the archbishop's influence was always exerted in his behalf in the councils of their Sovereign. How long Mr. De Lancey remained at the University is uncertain, as he entered at an advanced period and not at the beginning of the academic course. Towards the close of 1725, he returned to New York.[2] Admittted, soon after his arrival, to the bar, he commenced the practice of his profession in his native city, and soon rose to that eminence to which his great natural abilities and sound and cultivated judgment entitled him. He was early distinguished for the active and responsible part which he took in political affairs. Three years after his return, Gov. Montgomerie upon the death of Mr. John Barbarie, recommended him as that gentleman's successor in the Council of the Province. In his letter to the Lords Commissioners for Trade and Plantations[3] dated May 30th,

1 Lamb's Master's Hist. of Corp. Christ. Coll. Cambridge.
2 Lond. Doc. XXXI., 136. 3 Lond. Doc. XXIV., 15.

1728, the Governor says: "I am now fully convinced that it will be for his Majesty's service to appoint Mr. James De Lancey to be one of the Council here. He is every way qualified for the post; his Father is an eminent merchant, a member of the Assembly, one of the richest men of the Province, and he his eldest son. I beg your Lordships will recommend him as a proper person to succeed Mr. Barbarie."

The board followed the Governor's suggestion and did recommend him to the King, George II., by whom he was called up the council by mandamus bearing date Jan. 26th, 1729.[1]

Shortly before he entered the council Mr. De Lancey married Miss Anne Heathcote, the eldest of the two daughters of Hon. Caleb Heathcote a Councillor of the Province, and Receiver General of his Majesty's Customs in North America.[2] Already through his professional exertions, and the liberality of his father, in very easy circumstances, this marriage made Mr. De Lancey a wealthy man[3], for Miss Heathcote inherited upon her father's death one half of his large estate, real and personal; the latter

1 Smith's Hist. N. Y. i. 245.

2 This gentleman was a son of Gilbert Heathcote, Mayor of Chester in England, and was a merchant and a man of wealth in that country. The cause of his emigration was very different from that which brought most Englishmen to America. He was engaged to a very beautiful lady, to whom he introduced his eldest brother, Sir Gilbert Heathcote, (afterwards M. P. for London, and Lord Mayor of that city in 1711, at the very time his brother was Mayor of New York, and one of the chief founders and the first governor of the Bank of England), a circumstance most unfortunate for him, for the lady soon found she preferred the elder brother, and broke her engagement with the younger, who at once left England and came to New York, where he arrived in 1692. He bought large tracts of land in Westchester, from Indians and others, which he had erected into a manor called the Manor of Scarsdale. He became a leading man in the colony, was judge of Westchester and Colonel of its militia all his life, first Mayor of the borough of Westchester, a Councillor of the Province, Mayor of New York for three years, for a time Commander of the colony's forces and from 1715 to his death, in 1721, Receiver General of the customs for all North America. He married Anne, daughter of Col. (Tangier) Smith, of Long Island, so called from having been governor of that city in Charles 2d's time, and left two daughters: Anne who married James De Lancey and Martha married to Lewis Johnston M. D., of Perth Amboy.

3 When he first opened his office after his return from England, his father gave him £3000 currency towards "his advancement in the world," as the recital in his Will expresses it. See Will, N. Y. Surrogate's office, XIV., 91 &c.

alone amounting to upwards of £10,000 sterling and the former being one of the largest landed estates in the Province.

Stephen De Lancey, his father, died in 1741, upwards of 80 years of age, "worth at least £100,000 gained by his own honest industry, and that with credit, honor and reputation."[1] Besides which he possessed large tracts of land on New York Island and in Westchester, and Ulster counties. The whole of which estate he left to his five surviving children equally,[2] and the share which thus fell to James De Lancey, added to what he already possessed, made him one of the richest men in America.

The two puisne Judgeships of the Supreme Court becoming vacant in 1731, Mr. De Lancey was appointed to be second, and Mr. Adolph Phillipse third judge. Their commissons bear date the same day, June 24th, 1731. Up to this time Mr. De Lancey had been steadily practising his profession, and had acquired the character of an able advocate and an honest lawyer. His fellow barristers were men well known, and nearly all his seniors in age. Among them were Joseph Murray, James Alexander, Francis Harrison and William Smith, the elder.

In 1730 a new charter was granted to New York, the corporation of which, in token of Mr. De Lancey's zealous exertions in their favor upon the occasion, presented him with the freedom of the city, being the first person to whom they voted that honor under the new instrument.

Upon the death of Montgomerie in July 1731, Rip Van Dam, the eldest councillor, succeeded to the command and retained it till August 2d, 1732, when Col William Cosby, the new Governor, arrived and took the reins of government. The great dispute concerning the salary soon after arose between them, Van Dam having received the whole, and Mr. Cosby producing an order in Council, dated May 31st, 1732, and given to him in England soon after his appointment, directing its equal division between them. Mr. Van Dam would agree to this if Mr. Cosby would also divide certain funds which he alleged came to his hands in England The Governor declined this proposal, as the order referred only to the salary given by the colony and the perquisites arising from the granting of lands within its limits.

1 Jones' Mss. Hist. of N. Y. 2 Will Book XIV., 91, N. Y. Surrogate's office.

Van Dam then refused to pay over any thing and claimed a balance as due to himself. The Governor was thus compelled either to institute legal proceedings or give up his claim. Being a matter of account and therefore cognizable only in a court of Equity, an action could not be brought in the Supreme Court which was a court of Law. Being Chancellor *ex officio* the Governor was shut out from the Chancery as he could not of course hear his own cause. He proceeded therefore before the Judges of the Supreme Court as Barons of the Exchequer. This Court which had sat occasionally before, and the Chancery were however extremely unpopular, owing to a strange but inveterate prejudice against Courts of Equity which very early seized the people of New York.

Taking advantage of the popular feeling Mr. Van Dam's counsel pleaded to the jurisdiction, but the exception after full argument was overruled by the Court, the Barons standing two to one. Judges De Lancey and Phillipse in the affirmative and Chief Justice Lewis Morris in the negative. The latter delivered a dissenting opinion, on this occasion reflecting upon Gov. Cosby, who shortly after requested a copy of it in writing. This irritated the Chief Justice, who took the unheard of course of sending him a copy in print, with a very insulting letter,[1] and at the same time published both to the world. This extraordinry and insulting conduct of the highest judicial officer of the colony rendered Gov. Cosby very indignant, and he at once wrote the Duke of Newcastle, then minister, regarding the Chief Justice's conduct and urged his removal from office.[2] To this letter, dated May 3d, 1733, he must have received an early answer from the Duke coinciding with his views, for on the 21st of the following August, Mr. Morris was removed from office and James De Lancey was appointed Chief Justice of New York[3] in his stead.

The appointment was made under the usual clause in the Governor's commissions, which authorized them to "constitute

1 Bolton's Hist. of Westchester; II., 307.

2 Cosby's Letter, dated May 3d, 1733, in Lond. Doc.: XXIV., 232.

3 His. Comn. is recorded in Book of Comns., III., 272 in Sec. of State's Office, Albany.

and appoint judges." A power which they exercised independently of the council, and not with its "advice and consent," as in the erection of courts and the exercise of a few other powers.[1]

About two years afterwards came on before the Supreme Court the famous trial of John Peter Zenger for a series of libels on the Governor and chief officers of the colony. He was a printer by trade; in arrears to a small amount as collector of taxes in the city, and the Assembly had refused to allow him to discharge the small debt by doing public printing enough to cover it.[2]

He subsequently published a small paper entitled the New York Weekly Journal, at the instance of the opposition, in which the libels complained of were published. His counsel were James Alexander and Wm. Smith the elder, the supposed authors of the libels, two gentlemen of ability and intellect, both politically opposed to Chief Justice De Lancey.

Aware that the law would certainly convict their client they attempted to destroy the court, by excepting to the commissions of the judges as invalid and illegal; though they knew them to be in the usual form, and such as their predecessors had always held, and under which they had acted for a number of years. Their objections, if valid, would have destroyed the court as well as the commissions, for it existed not by force of any statute, as they contended, but by virtue of an ordinance of the Governor

1 See similar clause in Sir Danvers Osborn's Commission. Appendix to Smith's Hist. of N. Y.; I., 299.

2 The following entry explains Zenger's difficulties:—"Sept. 8, 1731. The petition of John Peter Zenger was presented to the House and read, setting forth, that he having been chosen Collector of sundry public Taxes in the city of New York, was prevented from gathering the same, when they should have been collected, by reason he fell under some Trouble from his creditors at that time, that by Removal of some and Insolvency of others, rated in the said Taxes, there is about Twenty three pounds irrecoverable; that, including the said sum, he remains accountable to the Province, for the sum of Forty pounds and upwards, for which he is informed Writs are issued against him. And that he being unable to pay the same, has been forced to keep out of the way, but proposes to discharge in his way of Printing, at the most moderate and reasonable wages. And therefore prays that Prosecution against him be stayed, and he employed in printing for the Publick. Ordered, That the said Petition lie on the Table."—N. Y. Assembly Journal; I., 627, 636

and Council, dated May 15th, 1699.[1] A formal denial of its existence deliberately made was therefore a gross contempt of court, and the Chief Justice from the bench warned the counsel of the consequences. But they persisted in tendering the exceptions, upon which the court made an order striking their names from its rolls and excluding them from further practice. Zenger being unable to procure other counsel, the Court assigned him Mr. Joseph Murray, with whom the silenced lawyers associated Mr. Hamilton of Philadelphia, who made so artful an address to the Jury at the trial a few days afterwards "that," in the words of one of their own friends,[2] "when he left his client in those hands, such was the fraudful dexterity of the orator, and the severity of his invectives upon the Governor and his adherents, that the Jury missing the true issue before them, they, as if triers of their rulers, rather than of Zenger, pronounced the criminal innocent because they believed them to be guilty."[3]

Chief Justice De Lancey's course on this occasion has been much misunderstood, owing to the fact, that the only report of the trial was that published by Zenger himself, written by the silenced lawyers, and printed, not in New York but in *Boston*, in 1738, three years after the trial, which of course represents him in the worst possible light. Taking the facts of the case, however, as given even there, it would be difficult to point out any other course which the court could have taken consistently with its own dignity and self-respect.

At this period, and from these controversies and others allied to them, arose the two great parties, which ever afterwards divided the people of the Province. The one maintaining principles moderate and conservative; the other, those of a more radical tendency.

Both professed the strongest attachment and loyalty to the British constitution, and vied with each other in claiming and upholding all the rights of Englishmen.

In New York, as in some of the other colonies, the religious element entered largely into politics. In point of wealth and

1 N.Y. Hist. Soc. Collections; III., 355.

2 Smith's Hist. N. Y.; II., 22.

3 See Report of the trial published by Zenger himself, in Boston, 1738.

influence the Episcopalians were the leading denomination, the Dutch Reformed Church came next, and the Presbyterians last; while in point of numbers their positions were exactly reversed, the Presbyterians outnumbering the Dutch, and the Dutch the Episcopalians. The last with most of the Dutch chiefly belonged to the conservative party; while the remainder of the Dutch, and the Presbyterians almost to a man, were found in the ranks of the opposition.

Another and very striking peculiarity in the composition of the colonial parties, was the remarkable preponderance of the wealth and social position of the Province on the side of the conservatives. In their ranks were found the Philipses, Van Cortlandts, De Lanceys, Bayards, Crugers, Wattses, Waltons, Van Rensselaers, Beekmans, Bleeckers, Barclays, Joneses of Long Island, Jays, Verplancks, Harrisons, and other substantial families, while in those of the opposition, the Livingstons, Morrises, Alexanders and perhaps the Smiths and one or two more were probably all that belonged to the same class.

The political contests were consequently warm and spirited, but always in the end terminated in favor of the conservatives, one of whose chief leaders was James De Lancey. The enforcement of Cosby's claim against Van Dam, and the prosecution and trial of Zenger, were, however, though both in strict accordance with the principles of Justice and the law of the land, against the popular feelings, which had been exerted by the cry that the people's rights were perilled by the establishment of Equity Courts, and that the liberty of the press was in danger. This feeling increased largely by the unprincipled attempts of Gov. Cosby, just before his death in 1736, to invalidate certain land patents on Long Island and in the Mohawk Valley,[1] was so intense that upon the dissolution of the old Assembly, in 1737, by Lt. Gov. Clark who succeeded him, the radical party carried the election which immediately followed.

But the triumph of the opposition was of very short duration. Lt. Gov. Clark, aware that the Council was strongly conservative, attempted to take a middle course, which lost him the confidence

1 Smith's History of N. Y.; II., 24.

of that body. Discovering this, he determined, in order to regain it, to break down the opposition by intriguing with their leaders to place them in office.

Lewis Morris, Jr., the Speaker, Mr. Simon Johnson and the other prominent men entered into his views and accepted his offers, but the Council refused to give their consent. In this unfortunate dilemma their intrigues became public, and the lessons of hatred and contempt for men in office which they had taught the people for the last few years, reacted so powerfully upon themselves, that "they instantly fell from the heights of popularity into the most abject contempt."[1] This proof of the absence of principle in their leaders destroyed the opposition. A dissolution of the Assembly soon followed, and in the new elections the conservatives regained their power. This ascendancy was henceforward maintained, and their party became supreme in the colony. The people, disgusted with their old leaders, gave it a cordial support, and the affairs of the Province continued in its keeping for a long series of years.

During this period Chief Justice De Lancey not only discharged the responsible duties of his office to the satisfaction of the colony, and with credit to himself, but was regarded on all sides as the acknowledged leader of the Council, a position he retained throughout the administration of Cosby, Clark and Clinton, and until his own accession to the command of the Province as Lieutenant Governor in 1753, a period of upwards of twenty years.

He was engaged also at times in important public matters in other colonies. Among other trusts of this nature he was appointed by the King one of the commissioners to settle the disputed boundary between Massachusetts and Rhode Island in 1741, and was an active member of the board. Neither province was satisfied with the result, and both appealed to the King in council. But the question remained an open one between the parties both as provinces and states, and was determined in 1846 or 1847, curiously enough, upon almost the very line marked out by the Royal Commissioners more than a century before.[2]

1 Smith's Hist. N. Y.; II., 44.

2 See original "Book of Minutes of the Com'rs" in Sec's office, Albany.

A notice to reconsider the subject has however been recently given in the Massachusetts legislature.

During the first few years of Gov. Clinton's administration harmony prevailed in the government. He reposed great confidence in the Chief Justice and the conservatives, which he manifested by presenting the former, of his own accord, as it appears, with a new commission as Chief Justice "during good behavior," or, in other words, for life, dated September 14th, 1744, in place of his former one, the tenure of which was only "during pleasure." Not long after, however, Mr. Clinton recommended certain measures which did not meet the approbation of either the Council or the Assembly, the most objectionable of which was the demand of an independent support for a term of years, in place of the annual appropriation hitherto made. This produced a rupture between him and those bodies, and he consequently withdrew his confidence from the conservatives, who opposed his measures, so that from 1746 to the end of his administration, in 1753, they were in continual opposition to the dominant party in the colony and in the legislature.

The Chief Justice took an active part in these disputes and exerted all his power in favor of the people and against the Governor, who had thrown himself into the arms of Dr. Colden, and the Chief Justice's old opponents, Mr. Smith and Mr. Alexander.

The influence possessed by Chief Justice De Lancey during this period was greater, perhaps, than that which any single individual ever exerted in New York prior to the Revolution. Smith, the author of the History of the colony, the son of William Smith, the elder, the rival and opponent of Chief Justice De Lancey, thus speaks of it, as manifested by the result of the election of 1752, which turned upon the questions involved in the controversies with Clinton.[1] "The influence of the Chief Justice was, nevertheless, so prevalent that he had a great majority of friends and relations in the new Assembly, convened on the 24th day of October, 1752." "It may gratify the curiosity of the reader to know, that of the Members of this Assembly, Mr. Chief Justice De Lancey was nephew to Col. Beekman,

[1] Hist. N. Y. II., 142, 143.

brother to Peter De Lancey, brother-in-law to John Watts, cousin to Philip Ver Planck, and John Baptist Van Rensselaer; that Mr. Jones, the speaker, Mr. Richard, Mr. Walton, Mr. Cruger, Mr. Phillipse, Mr. Winner and Mr. Le Count, were of his most intimate acquaintances; and that these twelve of the twenty-seven which composed the whole house, held his character and sentiments in the highest esteem. Of the remaining fifteen he only wanted one to gain a majority under his influence, than which nothing was more certain; for except Mr. Livingston, who represented his own manor, there was not among the rest a man of education or abilities qualified for the station they were in. They were, in general, farmers and directed by one or more of the twelve members above named. Of the whole House the only wealthy, able member, neither connected with Mr. De Lancey nor within the sphere of his influence, was Mr. Livingston.

"His station on the bench with the independent tenure of good behaviour, added to his amazing power, which was again augmented by the inferior abilities of his assistants and his incessant assiduity, joined to his own affluence, and that of his family, in cultivating all the arts of popularity from the moment he was disgusted by Mr. Clarke in 1737."

In the autumn of the next year, 1753, Gov. Clinton was superseded in the command of the Province by Sir Danvers Osborn. On the tenth of October, in that year, the new Governor was sworn in, in the presence of the Council, and received the seals from Governor Clinton, who at the same time produced and delivered to Chief Justice De Lancey, a commission as Lieutenant Governor dated Oct 24th 1747, which he had kept back in his own hands until this time. This commission, under the sign manual of George II., had passed the seals nearly six years before, and had been in Gov. Clinton's keeping ever since, who either from jealousy or fear of the Chief Justice, suppressed it till he could do so no longer.[1]

The facts relative to this commission and its suppression, reveal the determination of Gov. Clinton and his advisers, Smith

1 The original commission is in the possession of the Lt. Governor's grand-son, the Rt. Rev. William H. De Lancey, Bishop of Western New York; it was also recorded in book of Comns. IV., 122, in Sec's of State's office, Albany.

and Alexander, to undermine the Chief Justice in England, when they found they could not shake his power in New York. The course of the latter was approved by the Home Government, or he never would have been appointed Lieut. Governor, especially at the time when the promotion was made, for during the whole of 1747 Gov. Clinton and Dr. Colden were continually writing to the Dukes of New Castle and Bedford, two of the ministry, greviously complaining of him and his party.[1] They even went so far as to ask his removal from the Chief Justiceship. On the eighth of November, 1747, only fifteen days after his commission of Lt. Governor was signed by the King in London, and of course before he thought such a step was contemplated, Gov. Clinton wrote from New York to Mr. under secretary Stone, recommending the Chief Justice's removal from office, and the next day, the ninth, he wrote another letter to the Duke of New Castle, urging the same step.[2]

Finding however that he was promoted instead of disgraced, Mr. Clinton on the 13th of Feb. 1748, sent a sort of remonstrance to the Duke stating that Mr. De Lancey's advancement to be Lieutenant Governor was very unhappy for the Province and prejudicial to himself.[3] This sort of warfare was unceasingly kept up as long as Clinton remained in office, and while he actually had Mr. De Lancey's commission as Lt. Governor in his hands.

In 1751 the enemies of Mr. De Lancey changed their plan of operations. On the 28th of February Gov. Clinton sent a formal "memorial" to the Duke of Bedford praying that gentleman's removal from the office of Lieutenant Governor, and the appointment of another in his place.[4] This was followed, on the 8th of April, by a letter to the Board of Trade requesting his "suspension" from the Lieut. Governorship,[5] and on the 18th of July Dr. Colden was recommended as President of the council,[6] so that he might be ready to succeed Mr. Clinton, if the "suspension" took place. At the same time an intrigue was set on foot, as

1 See their various letters in London Document XXVIII., Secretary of State's office, Albany.

2 Ibid., 215, 219. 3 Ibid., 238. 4 Ibid., 210. 5 Ibid: XXX., 354. 6 Ibid. 261.

appears from a letter of Mr. Charles, the colony's agent in London, to the speaker of the Assembly,[1] to get Mr. Robt. Hunter Morris appointed Lieutenant Governor of New York; Gov. Clinton and his friends being determined, if it were possible, to oust Lt. Gov. De Lancey from his office by any means in their power.

But all these efforts were utterly futile. Mr. Clinton was not only compelled, in the end, to deliver up to Mr. De Lancey his commission, but to undergo the further mortification of witnessing the manifestations of popular pleasure which the announcement of the fact produced.[2] Two days afterwards, on the 12th October, 1753, occurred the tragical death of Sir Danvers Osborne, who committed suicide in a fit of insanity, and the command of the province immediately devolved upon Mr. De Lancey. His accession was hailed with general delight, for his long service as Chief Justice, having traveled the circuits upwards of twenty years, had made the people of the Province thoroughly acquainted with him; and the approval of his elevation, which they now manifested, showed how highly they esteemed his character and capacity.

At this time the agitation of the great question of the day, regarding the support of Government, was at its height. The "instructions," which accompanied the commissions of the Colonial Governors, provided that acts giving a permanent support for five years, should be passed by the Assembly as often as was necessary. This had always been done previous to 1737; but finding that the certainty of a support for so long a period rendered the Governors very independent, and gave rise to prodigality of different kinds, the Assembly of that year determined that the support acts should be annual for the future in spite of the "instructions." This was considered an encroachment upon the royal prerogative and as such was strongly resisted.

From that time this subject caused great struggles between the Assembly and the Governors; but the former would only pass annual bills, though the latter always asked those for five years. Gov. Clinton, during the first three years of his administration, signed annual bills—then he refused to do it any

1 Smith's Hist. N. Y. II., 145, 146. 2 Smith's Hist. N. Y. II., 152.

longer and demanded a revenue for five years, which caused the rupture between himself and Chief Justice De Lancey and the conservative party, who were warmly in favor of the annual mode of support. A long and severe contest followed in which the nearly general voice of the province was with the conservatives, while curiously enough the supporters of the Governor were Mr. Smith, Mr. Alexander and their friends, who were the original proposers of the annual mode in 1737.[1]

In the midst of this contest of the people against the prerogative, with his feelings, opinions and political sentiments altogether on the popular side, the Lt. Governor found himself unexpectedly called to the supreme command. The thirty-ninth of the new "instructions," which Sir Danvers Osborn had brought out, and which his office compelled him to obey, enjoined in the strongest terms upon the Commander-in-chief to insist upon "a permanent revenue solid, indefinite, and without limitation."[2]

The difficully of his position now, was only equalled by its delicacy. His individual and party views, and the popular sentiment, favored one course of action, while his commission, his "instructions," and the oaths of office pointed out another.

In spite of all the danger which his popularity and consistency ran, he did his duty and boldly communicated the obnoxious "instructions," as he was bound to do, with his first speech to the Assembly, and told them they must act accordingly.[3] And in all his future speeches he continually urged them to obedience. At the same time he received all their resolutions, representations and addresses against the measure, and forwarded those they wished to the home government, and when it was proper, wrote to the ministry pressing upon them to agree to the views and wishes of the Province. But he would not assent to the annual bills they passed and sent to him, in consequence of which he received no salary as Commander-in-chief till 1756, in the spring of which year the ministry gave up the point and agreed to annual support bills for the future, and directed Sir Charles Hardy, the then Governor, to communicate the change of the

1 Assembly Journals; I., 728, 732. 2 Assembly Journals; II., 351.
3 See as before Assembly Journals; II., 351.

instruction to the Assembly, which he did on the 24th of the following September.[1] This was a great triumph for the colony, and for which it was indebted solely to the policy of Lt. Governor De Lancey, and the tact and statesmanship he shewed in carrying it out. A fact so manifest as to compel the reluctant praise of the partial author of the History of New York.[2]

On the 19th of June, 1754, Lieut. Governor De Lancey convened and opened the celebrated Congress of Albany, over which he presided. This was a Congress of delegates from all the colonies[3] which the home government directed the Lt. Governor of New York to hold, for the purpose of conciliating the Indian nations who were invited to attend it; of renewing the covenant chain and attaching them more closely to the British interest, and for comprising all the provinces in one general treaty to be made with them in the King's name, and for no other purpose.[4] Speeches and presents were made to the Indians who promised to do all that was asked of them, but no formal treaty whatever was concluded. The Congress voted instead, that the delegation from each colony except New York, should appoint one of their number, who together should be a committee to digest a plan for a general union of all the colonies

The choice of the New York committee-man was left to Lt. Governor De Lancy, who, acting most impartially, appointed his political opponent, William Smith, Esq^{r}., the elder.[5] This movement, which was not within the objects of the Congress as defined in the letter of the Board of Trade above mentioned, resulted in the adopting of a plan of a union to be made by act of Parliament, which, after its provisions were resolved on, was put into form by Benjamin Franklin, who was a delegate from Pennsylvania, and which was not decided upon, but merely sent to the different provinces for consideration.

1 Assembly Journals; II., 500.

2 Smith's Hist. N. Y.; II., 232.

3 Virginia and Carolina did not send delegates, but desired to be considered as present. Doc. Hist. N. Y.; II., 567.

4 See Letter of Lords of Trade, directing the holding of the Congress, and the minutes of its proceedings in full, in Doc. Hist. N. Y.; II., 555.

5 Doc. Hist. N. Y.; II., 585.

Before the motion for the appointment of this committee was made, Lt. Gov. De Lancey, being in favor of the colonies uniting for their own defence, proposed the building and maintaining, at the joint expense of the colonies, of a chain of forts covering their whole exposed frontier, and some in the Indian country itself. But his plan was without effect upon the Congress; for as he tells us himself, "they seemed so fully persuaded of the backwardness of the several assemblies to come into joint and vigorous measures that they were unwilling to enter upon the consideration of these matters."[1] His idea seems to have been for a practical union of the colonies for their own defence to be made by themselves; while that of the committees, who despaired of a voluntary union, was for a consolidation of the colonies to be enforced by act of Parliament. Neither plan, however, met with favor in any quarter, and the Congress effected little but the conciliation of the Indians.[2]

In the autumn of 1754 the Lt. Governor suggested to the Assembly the system of settling lands in townships instead of patents, a measure which, being passed by them, rapidly increased the population and prosperity of the colony.[3]

On the thirty-first of October, 1754, Lt. Governor De Lancey signed and passed the charter of King's (now Columbia) College, in spite of the long and bitter opposition of the Presbyterians, led by Mr. William Livingston. So decided were these against the Episcopalians at this time, and so determined were the efforts of Mr. Livingston to break down the college, that, though signed and sealed, the charter was not delivered in consequence of the clamor till May 7th 1755, when, after an address, Lt. Governor De Lancey presented it to the trustees in form.[4]

This college controversy gave renewed vigor to the feud between the De Lancey and Livingston parties, the former of whom were leading supporters of the College, and the latter its bitterest foes. A feud, which burning strongly ever after, exerted

1 See his speech to the Assembly of August 20th, 1754. Ass. Jour.; II., 386, 387.

2 See the proceedings of the Congress. Doc. Hist. N. Y.; II. 545.

3 Assembly Journal; II., for September, 1754.

4 Moore's Hist. Col'a College, p. 20.

a controlling influence in the future politics of the colony. So much so that in 1759 the two parties were designated by the names of these two powerful and wealthy leaders.[1]

In the spring of 1755 the Lt. Governor attended the council of Governors, called by Gen. Braddock, at Alexandria, and aided in the adoption of the measures there concerted against the French, with whom hostilities had commenced.[2] Sir Charles Hardy, the new Governor, appointed in Sir Danvers Osborne's place, arrived and took command of the Province on Sept. 2nd, 1755; and Lt. Governor De Lancey resumed his seat upon the Bench as Chief Justice. Gov. Hardy was an officer of the Navy and not much accustomed to civil affairs. He depended chiefly on the Lieut. Governor, who supported all leading measures, except the ill-advised and unsuccessful attempt he was induced to make to vacate the Kayayderosseras and a few other land patents. Preferring his professional life, Sir Charles, after a ten months' residence in New York applied to be allowed to resign his government and to re-enter the Navy.[3] A short time afterwards his request was granted, and being made a Rear-Admiral, he sailed from New York, with a command in the expedition against Louisburgh, on the second of July, 1757, just twenty-two months after his arrival in that city. By this resignation the command again devolved upon Mr. De Lancey. The war with France was then going on, and the Province was entirely engaged during this, and the two succeeding years, in military affairs and measures. During this period civil matters were very quiet, and the energies of the Lt. Governor were given to promoting, directing, and carrying out the various measures which the events of the war rendered necessary on the part of the Colony. He contributed greatly to the retrieving of the disasters of 1757, and to the success of the operations of 1758 and 1759; and especially to promoting the expedition which ended in the repulse at Ticonderoga, and that which followed it in the succeeding year.

Though generally quiet, the opposition did not give up entirely their attempts against the party in power. The most notorious

1 Smith's Hist. N. Y.; II., 273. 2 Doc. Hist. N. Y.; II., 648.

3 See his letter to this effect, dated Aug. 2nd, 1750, Lond. Doc.; XXXIII., 367.

of which was the printing, in England and secret circulation there and in the colony, of an anonymous pamphlet, entitled a "Review of the military operations in North America, from the commencement of the French hostilities on the frontiers of Virginia, in 1753, to the surrender of Oswego, on the 14th August 1756, in a letter to a nobleman." In this publication the Lt. Governor was attacked by name, and in terms of bitterest invective. Falsehood was, however, so evident on its face that neither Lt. Gov. De Lancey, nor any of the other gentlemen whom it attacked, ever considered it worthy of notice. Mr. Alexander superintended its printing as he acknowledged himself,[1] being at the time in England, engaged in his vain attempt to prove title to the earldom of Stirling; but its author is now believed to have been William Smith, the younger, the writer of the colony's history, notwithstanding it has been ascribed to Mr. Livingston.[2]

The Assembly adjourned in the summer of 1760, and shortly after the colony was startled by the very sudden and unexpected death of Lieut. Governor De Lancey, which happened on the morning of Wednesday, the 30th of July, in that year.[3] He was discovered by one of his children in a dying condition in his library, too far gone for medical aid to be of the least service: his dissolution having been caused by an affection of the heart.

1 Smith's Hist. N.Y., II., 255. 2 "This pamphlet was written in New York, and it is believed, from circumstances, that William Smith, afterwards Chief Justice of Canada, was the author; that he copied it himself, never permitting either of his clerks to see a word of it; that the manuscript was carefully nailed up in a box prepared for the purpose, and sent to London to be printed. The pamphlets, when received from London, were not publicly distributed, and only a few of them were given to particular individuals. But it soon became known in the city that such a pamphlet existed. I was then a clerk in Smith's office, and wished to procure one of the pamphlets, but all my endeavors were fruitless; and I never got one until some time during the revolutionary war, when I met with one at an auction in New York and purchased it." *Hon. Samuel Jones' notes on Smith's History of N. Y. in Vol. 3 of N. Y. Hist. Soc. Collections, p. 361. See also a prior letter of his, same Vol. p. 349. The pamphlet itself is in Mass. Hist. Soc. Collections, VII., p. 67.*

3 Some doubt has been thrown around the precise date of his death. Dunlap places it in 1759, and some other writers have followed him. But the council minutes, (XXV., 316,) and the newspapers of the day, agreeing with family tradition, fix it, beyond cavil, as stated in the text

The next evening the funeral took place with great pomp; the Rev. Mr. Barclay performed the solemn services in Trinity church, which was illuminated for the occasion, after which the body was deposited in the family vault beneath the centre aisle of that edifice.[1]

The death of Lieut. Governor De Lancey was deeply felt and lamented by the people of the colony as he was universally beloved and highly esteemed. "To do ample justice," says one of the newspapers of the day, "to this eminent character, so suddenly taken from us, is what the world will hardly expect, or his distinguished accomplishments, indeed, permit. He enjoyed a quick conception, a deep penetration, a clear judgment and a retentive memory. His natural talents, heightened and improved by his attainments in literature, and an intimate acquaintance with mankind, made him an agreeable and instructive companion to those who were honored with his conversation; and qualified him to fill the most important offices with uncommon dignity and lustre. His genius, provident, active, fertile in expedients, and capable of averting or improving the most unexpected occurrences, joined to a perfect knowledge and esteem of our happy constitution, and a zealous attachment to his Majesty's illustrious House, rendered him a most able and faithful counsellor of the Crown; and, to the rights and liberties of the people, a cordial and unshaken friend. On the chief seat of justice, he was, for capacity and integrity, equalled by few, exceeded by none. Patient in hearing, ready in distinguishing, and, in his decisions sound and impartial—he gave such universal satisfaction that even the vanquished confessed the justice of the sentence. His promotion to the Government, at a season the most momentous to the colony, was signally advancive of his Majesty's service, and the public emolument. And by the confidence of the people, reposed in his superior abilities, they were induced to exert themselves in the common cause with the greatest alacrity."[2]

To this evidence of the estimation in which he was held at the time of his decease, may be added the testimony of one who

1 See long accounts of this funeral in New York Mercury and Parker's Post Boy, and other papers of the day.

2 Editorial from the "New York Mercury" for Aug. 4th 1760

knew him very intimately, both officially, and in private, the Hon. John Watts, an eminent citizen of New York, and a member of the council during, and long after, Lt. Governor De Lancey's time, who was the author of the following sketch of his character and death, written in 1787, nearly thirty years after that event:[1]

"James De Lancey was a man of uncommon abilities and in every view, from the law to agriculture, and an elegant, pleasant companion—what rarely unites in one person; it seemed doubtful which excelled, his quick penetration or his sound judgment: the first seemed an instant guide to the last." "No man in either office, (Chief Justice or Lieut. Governor,) had more the love and confidence of the people, nor any man, before or since, half the influence. He was unfortunately taken from us in July, 1760, so suddenly that his very family suspected no danger. We had spent, very agreeably, the day before on Staten Island; after ten at night he left my house perfectly well, in the morning he was as usual, but about nine a servant was dispatched to tell me his master was very ill; I mounted instantly and hurried to his house, in Bowery Lane, but on the way was alarmed by a call 'that all was over,' and too true I found it; he sat reclined in his chair, one leg drawn in, the other extended, his arms over the elbows, so naturally, that had I not been apprized of it, I certainly should have spoken as I entered the room. No body but his youngest daughter, a child, was present at the time, so little did the family apprehend the least danger. Never did these eyes behold such a spectacle, or did my spirits feel such an impression. The idea affects me whenever I think of it; to lose such a companion, such a counsellor, such a friend."

Lieut. Governor De Lancey left three sons and three daughters. James, the eldest, educated at Eton and Cambridge University, was a prominent member of the Assembly for many years prior, and up to the Revolution. He went to England on a visit in the spring of 1775, and, the war commencing, did not return. His son, Lieut. Col. James De Lancey, of the First Dragoon Guards, is the only male member of his family now

1 The original, in Mr. Watt's handwriting, was found among the papers of his daughter, Mrs. Leake, and is now in the possession of her niece, Mrs. Henry Laight of New York, Mr. Watts' grand daughter.

living. Stephen, the second son, whose intellect was affected by disease in his infancy, was killed accidentally in 1795. Of the daughters, Mary married William Walton of New York; Anne became the wife of the Hon. Thos. Jones of Fort Neck, Recorder of New York, and one of the Justices of the Supreme Court of the Province; and Susannah died unmarried. John Peter, the youngest child of the Lieut. Governor, was also educated in England, at Harrow, and at the military school at Greenwich; he entered the army, served till 1789, when he threw up his Commission of Captain, returned shortly after to America, and resided till his death in 1828, at his grandfather Heathcote's old seat, at Mamaroneck, Westchester county, of which he was the proprietor.[1]

No American had greater influence in the colonies than the subject of this sketch. Circumstances, it is true, aided in raising him to this elevation, such as education, connections, wealth, and his high conservative principles; but he owed as much to personal qualities, perhaps, as to all the other causes united. Gay, witty, easy of access, and frank, he was personally the most popular ruler the Province ever possessed, even when drawing tightest the reigns of government.

It was this unusual admixture of the popular spirit with that of the incumbent of office, that rendered him so obnoxious to the assaults of his enemies. There are few instances in our history, of attempts to destroy a public man, such as those which were made by the enemies of James De Lancey. When Sir Danvers Osborn was found suspended in a garden, dead, it was whispered that he had come to his end through the ambition of his successor, the new head of the colony.[2] Subsequently it was proven beyond a cavil, that Osborn, borne down with grief

1 Thomas James, the eldest son of this gentleman, died a judge of Westchester county, at the age of 32; William Heathcote, his younger son, is the present Bishop of Western New York; Edward Floyd, another son, died in early manhood. His eldest daughter, Anne Charlotte, married John Loudon McAdam, immortalized by his system of making roads; the second, Susan Augusta, the wife of the late J. Fennimore Cooper, Esq., died 20th Jan'y, 1852; and the two youngest are still living unmarried.

2 Smith's History of New York; II., Chap. 3.

at the death of his wife, had made two previous attempts at suicide; but so frantic were the efforts of his opponents, that the unscrupulous did not hesitate covertly to bring the charge of murder against their successful rival. After withholding his commission wrongfully for six years, they consummated their opposition by hinting at this atrocious calumny.

Religious acrimony greatly heightened the intensity of the hostility to De Lancey. He and his associates openly laughed at what they termed "the sanctimonious grimaces" of the other sects, and possibly were more careless of those cutting wounds inflicted by the tongue, than was either right or prudent. As a consequence, his name has passed into history under colors which take their hues rather from the passions of the day than from the light of truth. The head of the court party, he was termed a demagogue—a gentleman, a scholar, affluent, and of a peculiarly gay and social temperament, he is accused of the sordid vices of the miser and extortioner,—delicate, a martyr to asthma, and obliged to be abstemious, he is charged with low excess—beloved by all around him, he is denounced as hateful—and approved by the ministry in England, even when opposing their policy, he is pointed out to posterity as a political sycophant.

The near approach of the Revolution, and the uncontradicted odium that the popular writers of this country lavished, as a matter of course, upon the servants of the crown, contributed to the success of the false character thus given to Lieut. Governor De Lancey. The representations of defeated opponents have been received for historic truth, and an almost village littleness of gossip accepted for an analysis of character.

James De Lancey was the fourth, and last, native of New York that administered the affairs of that colony. He corresponded personally, as well as officially, with Pitt, afterwards Earl of Chatham, during the critical period of the war of 1756. At his death, his sister, Lady Warren, applied to that statesman to put her yougest brother, Oliver De Lancey, in the office he had filled; but finding the minister turning a cold ear to her application, she cried with warmth, "I hope, Mr. Pitt, you have had reason to be satisfied with the brother I have lost." "Madam," was the answer, "had your brother James lived in England, he

would have been one of the first men in it."[1] The great fault of his character was indolence. He read but did not like to write. So far from being avaricious or grasping, he even loved his ease more than he loved money. One of the sources of profit to the colonial Government was the fees payable upon the signing of land patents. At the death of Lieut. Governor De Lancey, it is said that so many of these patents awaited his approval, that the signing them gave a large sum at once to his successor, Mr. Colden.

1 This remark was mentioned by Lady Warren to the Lt. Governor's youngest son, John Peter De Lancey, by whom the anecdote was related to his son and son-in-law, Bishop De Lancey, and J. Fennimore Cooper, Esq.

MISCELLANIES

The First Church in New Netherland.—It is stated by the Rev. Mr. Prime, in his *History of Long Island*, 132, that the church erected at Southold and that at Southampton, "were the first sanctuaries erected for the worship of the Living God, within the entire province of the New Netherlands." This is entirely a mistake. The earliest of these buildings does not date further back than 1640, whilst it is on record in the Secretary of State's office, that Director Van Twiller caused a church to be erected in New Amsterdam, now New York, as early as the year 1633.

Christmas on the Mohawk River in 1769.—The manner in wch. ye ppl. in yse parts keep Xmas day in commemor'g of the Birth of ye Saviour, as ya pretend is very affect'g and strik'g. They generally assemble for read'g prayers, or Divine service—but after, they eat drink and make merry. They allow of no work or servile labour on ys day and ye follow'g—their servants are free—but drink'g swear'g fight'g and frolic'g are not only allowed, but seem to be essential to yc joy of ye day.—*Rev. S. Kirkland's Journal.*

The first Episcopal Church in Poughkeepsie was erected in 1774. It was a very handsome stone building fifty-three feet by forty. Rev. John Beardsley had, however, been a missionary at that place for several years previous. This gentleman adhered to the Crown on the breaking out of the Revolution; was appointed Chaplain to the Loyal American Reg't in 1782, and in 1783 emigrated with his family to New Brunswick and settled at a place called Maugerville, where he died.

4 Apl. 1763—The mail was sent for the first time to Schenectady.—*Sir Wm. Johnson's MSS.*

July, 1772.—The mail to be sent weekly from N. York to Albany up one side of the River and down the other, for which an extra £100 is to be allowed.—*Ib.*

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Library of Sir Henry Moody, Bart. one of the first Patentees of the Town of Gravesend, L. I.—Cathologus contining the names of such books as Sir. Henry Moedie had left in security in handts of Daniel Litscho wen hy went for Virginia:

A latyn Bible in folio.
A written book in folio contining privatt matters of State.
A writteneth book in folio contining private matters of the King.
Seventeen several books of devinite matters.
A dictionarius Latin and English.
Sixteen several latin and Italian bookx of divers matters.
A book in folio contining the voage of Ferdinant Mendoz, &c.
A book in folio kalleth Sylva Sylvarum.
A book in quarto callth bartas' six days worck of the lord and translat in English by Josuah Sylvester.
A book in quarto kalleth the Summe and Substans of the Conference which it pleased his Excellent Majsti to have with the lords bishops &c. at Hampton Court contracteth by William Barlow.
A book in quarto kalleth Ecclesiastica Interpretatio, or the Expositions upon the difficult and doubtful passage of the Seven Epistles callet Catholique and the Revalation collecteth by John Mayer.
Elleven several bookx moore of divers substants.
The Verification of his fathers Knights order given by King James.—*Notarial Reg. of Soloman Lachaire N. P. of New Amsterdam, Anno* 1661.

N. Y. Libraries Destroyed.—A very fine Library, left fifty years ago by the Rev. Dr. Millington for the use of the Missionaries, consisting of above 1,000 volumes, together with the College Library and their philosophical apparatus, and another library belonging to the inhabitants, were plundered, sold and dispersed by the British soldiers when they took possession of New York.—*Abstract of the Soc. for Prop. the Gosp.* 1779.

General Fraser.—Many enquiries have been made for the christian name of General Fraser, who was killed at the Battle of Stillwater, 7th October, 1777. Jesse, (Mem. of the Pretenders I.; 127,) and others confound him with the son of Lord Lovat, who was beheaded for joining the pretender, and who died in 1782. Beatson, in his Political Index II.; 150–1, contains a list of Colonels in the Army who, "at different periods, served as Brigadier Generals in North America and the West Indies since the commencement of the war in 1775," and on p. 151 is the name of "Simon Fraser. Died of the wounds received at the battle of Stillwater." He was grand uncle to the celebrated Sir James Mackintosh. Dodsley's Annual Reg., 1780, pp. 218–19, contains an abstract of the cause of Mr. Schreiber, pltff., against Mrs. Fraser, widow of the late Gen'l Fraser, who died at Saratoga, deft., for damages on a breach of promise of marriage. Verdict for pltff. £600 damages and costs. We are indebted to Dr. Harris, the polite Librarian of Harvard College, and to other correspondents, for many interesting particulars of the Fraser family; but want of space excludes them at present.

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